



City of Concord
City Solicitor's Office
41 Green Street
Concord, New Hampshire 03301
legal@concord.com

Paul F. Cavanaugh
City Solicitor

Telephone (603) 225-8505
FAX (603) 225-8558

Suzanne Dixon
Paralegal

August 3, 2006

Ms. Lynn Fabrizio
Staff Attorney
NH Public Utilities Commission
21 S. Fruit St., Suite 10
Concord, NH 03301-2429

Re: Investigation into Utility Poles / DM 05-172
The City of Concord's Responses to follow-up Staff Data Requests dated 6-23-06

Dear Attorney Fabrizio:

Enclosed please find the City of Concord's Response to follow-up Staff Data Requests dated 6-23-06 with attachments for filing with the Commission. A copy of this response has been e-mailed to all parties on the service list currently on the PUC website.

Thank you for your attention in this regard.

Sincerely,

Paul F. Cavanaugh

skd/encl.

cc: Debra A. Howland, Executive Director & Secretary
Librarian
NH Public Utilities Commission
Service List (via e-mail only)

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION
INVESTIGATION INTO UTILITY POLES
DOCKET NO. DM 05-172
COMMISSION STAFF'S TOPIC 3
FOLLOW UP DATA REQUESTS - 06/23/06

NOW COMES, The City of Concord ("City"), a municipal corporation duly chartered by the State of New Hampshire with a usual place of business at 41 Green Street, Concord, New Hampshire, and provides the following responses to the Public Utilities Commission's Follow up Data Request of June 23, 2006:

4-4B) Municipalities

Please provide copies of any municipal by-laws, rules and/or other related documents, as well as citations to rules, regulations, statutes or FCC and NHPUC orders that support the position that municipalities are entitled to attach or place wires on or in utility-owned poles and conduit, respectively, without payment of attachment or conduit fees. If this is the position followed by your municipality, please explain your position in detail.

Response:

This answer has been previously provided in Response 4-4 of the Commission Staff Data Request of 04/20/06.

The statutory context for municipal use of space on poles is primarily RSA Chapter 231.

Person Responsible: Paul F. Cavanaugh, City Solicitor

Date: 8/3/06



Solicitor's Office
City of Concord
41 Green Street
Concord, NH 03301

4-4C) Municipalities

Please provide copies of any municipal by-laws, rules and/or other related documents, as well as citations to rules, regulations, statutes or FCC and NHPUC orders that support the position that municipalities are entitled to attach or place its wires on or in utility-owned poles and conduit, respectively, without payment of make-ready, engineering or survey costs associated with the attachment or placement of its wires on utility owned poles and conduit, respectively. If this is the position followed by your municipality, please explain your position in detail.

Response:

For the past 100 years the City of Concord has placed its wires in conduits and on utility poles throughout the city. This practice has never been questioned or objected to by any utility until 2001-2002. No payment of fees has ever been requested and none have ever been paid which supports our position that make-ready fees are not applicable to the city. The utility companies have provided access (at least 1 gain and 1 conduit duct) to the city for the past 100 years.

If space is reserved why would there be need for make ready charges in the first place? Utilities should have engineered poles to assume we would use it. They should have advised other users of the pre-existing reserved space.

Person Responsible:

Paul F. Cavanaugh, City Solicitor
Edward Roberge, City Engineer

Date:

8/3/06



Solicitor's Office
City of Concord
41 Green Street
Concord, NH 03301

4-4D) Municipalities

Please provide copies of any municipal by-laws, rules and/or other related documents, as well as citations to rules, regulations, statutes or FCC and NHPUC orders that support the position that existing attachers, including the utility that owns the pole, are required to bear costs for make-ready (rearrangements, etc.) if modifications to poles are caused by a municipality's request to attach its wires. If this is the position followed by your municipality, please explain your position in detail.

Response:

See answer to 4-4C.

Further answering, the city has for years worked with the utility companies for improvements and repairs to poles and wires located throughout the city. We have never been charged a fee and we do not charge the utility a fee to correct problems when they occur. There has always been a mutual cooperative agreement for the benefit of the general public and to serve the best interest of general public.

See attached agreements between the City of Concord and Concord Electric Company dated May 10, 1926 with corresponding Journal of the Board of Aldermen (1) and the City of Concord and New England Telephone and Telegraph Company Agreement dated October 18, 1926 with corresponding Journal of the Board of Aldermen (2).

Person Responsible:

Paul F. Cavanaugh, City Solicitor
Edward Roberge, City Engineer
Rick Wollert, Acting Fire Alarm Superintendent

Date: 8/3/06



Solicitor's Office
City of Concord
41 Green Street
Concord, NH 03301

4-4E) Municipalities

Please provide copies of any municipal by-laws, rules and/or other related documents, as well as citations to rules, regulations, statutes or FCC and NHPUC orders that support the position that utilities should or are required to reserve space on poles for municipal use. If this is the position followed by your municipality, please explain your position in detail, including how this is not discriminatory under federal law relative to other attachers.

Response:

Initial licensing agreements were provided to utilities as part of the original approval process to allow them to place wires, reserving space to the city. See prior answer provided in Licensing Response 4-4 of the Commission Staff Data Request of 04/20/06.

The city takes no position on whether or not this practice is discriminatory in nature.

Person Responsible:

Paul F. Cavanaugh, City Solicitor
Edward Roberge, City Engineer

Date:

8/3/06



Solicitor's Office
City of Concord
41 Green Street
Concord, NH 03301

4-4F) Municipalities

Please provide copies of any municipal by-laws, rules and/or other related documents, as well as citations to rules, regulations, statutes or FCC and NHPUC orders that support the position that utilities can require telecommunications and cable television pole attachers to remove or rearrange their wires without at least 60 days prior written notice, absent an emergency situation for which advance written notice is impractical. If this is the position followed by your municipality, please explain your position in detail.

Response:

The City takes no position on this issue.

Person Responsible:

Paul F. Cavanaugh, City Solicitor
Edward Roberge, City Engineer

Date:

8/3/06



Solicitor's Office
City of Concord
41 Green Street
Concord, NH 03301

4-4G) Municipalities

Please provide copies of any municipal by-laws, rules and/or other related documents, as well as citations to rules, regulations, statutes or FCC and NHPUC orders that support the position that municipalities are not counted as attachers for purposes of apportioning the cost of unusable space under the FCC's pole-attachment rate formula applicable to telecommunications carriers. If this is the position followed by your municipality, please explain your position in detail.

Response:

See answer previously provided in Licensing Response 4-4 of the Commission Staff Data Request of 04/20/06.

Person Responsible:

Paul F. Cavanaugh, City Solicitor

Date:

8/3/06



Solicitor's Office
City of Concord
41 Green Street
Concord, NH 03301

4-4H) Municipalities

Please list the attachment rates per solely-owned and jointly-owned utility poles per year that you pay or have paid to utilities in New Hampshire, identifying the specific rates for each utility. Similarly, please also list the conduit rates per utility that you pay or have paid.

Response:

See answer to 4-4D.

Person Responsible: Paul F. Cavanaugh, City Solicitor

Date: 8/3/06



Solicitor's Office
City of Concord
41 Green Street
Concord, NH 03301

4-4I) Municipalities

Please provide copies of any municipal by-laws, rules and/or other related documents, as well as citations to rules, regulations, statutes or FCC and NHPUC orders that support the position that the FCC prohibits utilities from charging municipalities or individual parties for relocating poles, whether temporarily or permanently, when done at the municipality's or individual's request. If this is the position followed by your municipality, please explain your position in detail.

Response:

To the extent that relocation becomes necessary for public health, safety or convenience, utilities are required to relocate their facilities at their own expense. For a detailed outline, see "A Hard Road to Travel", 2004 Edition, prepared by the Local Government Center, Chapter 13, pages 194-196.

See also NH RSA 231:177 Removal of Wires and Poles by the State or Town After Notice. – "Poles used by telephone, telegraph or other public utilities including railroads and street railways may be removed after 10 days' notice in writing of the intention to remove the same has been given by the commissioner of transportation or the highway agent of any city or town."

See also answer to 4-4D.

See also the city's response to Licensing Response 4-24 of the Commissions Staff Data Request of 04/20/06.

Person Responsible: Paul F. Cavanaugh, City Solicitor

Date: 8/3/06



Solicitor's Office
City of Concord
41 Green Street
Concord, NH 03301

4-5A) Municipalities

Please describe what types of communication cable(s) you are running in the municipal space and their use, other than from traditional fire police signal cable.

Response:

Types:

Twisted copper pairs

Fiber optic cables

Use:

Municipal voice and data communications.

Person Responsible: Rick Wollert, Acting Fire Alarm Superintendent

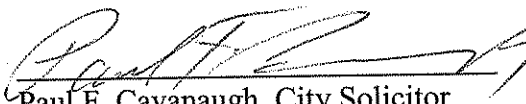
Date: 8/3/06



Solicitor's Office
City of Concord
41 Green Street
Concord, NH 03301

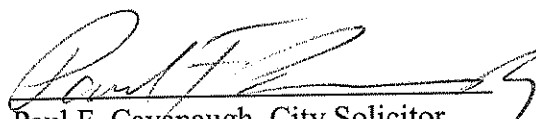
Respectfully submitted,
CITY OF CONCORD

Dated: 8/3/06

By: 
Paul F. Cavanaugh, City Solicitor
41 Green Street
Concord, New Hampshire 03301
603-225-8505

Certificate of Service

I hereby certify that on this 3rd day of August, 2006, the foregoing responses were sent to all parties listed on the current e-mail service list of the NH Public Utilities Commission.


Paul F. Cavanaugh, City Solicitor



Solicitor's Office
City of Concord
41 Green Street
Concord, NH 03301